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10 FEDERAL DISTRICT COURT  
11 WESTERN DISTRICT OF WASHINGTON

12 NORTHWEST FROZEN, LLC, a  
13 Washington limited liability company,

14 Plaintiff,

15 vs.  
16 VICTORY PACKAGING, L.P., a Texas  
17 limited partnership,

18 Defendant.

No.

COMPLAINT

JURY DEMANDED

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18 I. **INTRODUCTION**

19 1. Plaintiff Northwest Frozen, LLC comes to this Court to be made whole from Defendant  
20 Victory Packaging, L.P.'s breach of a contract to provide sushi trays.

21 II. **PARTIES**

22 2. Plaintiff Northwest Frozen, LLC is a Washington State Limited Liability Company  
23 with a principal place of business in King County, WA.

1 3. Defendant Victory Packaging, L.P. is a limited partnership formed in Texas and doing  
2 business in King County, WA.

3 **III. JURISDICTION AND VENUE**

4 4. This Court has jurisdiction pursuant to 28 USC § 1332 because there is complete  
5 diversity among the parties and the amount in controversy exceeds \$75,000.00.  
6 5. Venue is appropriate in the Western District of Washington pursuant to 28 USC § 1391  
7 (2) because Defendant operates a distribution center within, transacted with Plaintiff  
8 in, and delivered the goods complained of, within the district.

9 **IV. FACTS**

10 6. Plaintiff produces pre-packaged frozen sushi for wholesale.  
11 7. Defendant agreed to provide plastic sushi trays to Plaintiff with certain specifications,  
12 for a per-unit payment.  
13 8. Defendant was informed and understood that the trays were for use in manufacturing  
14 Plaintiff's product.  
15 9. Defendant shipped plastic sushi trays to Plaintiff beginning in or about September  
16 2018.  
17 10. Beginning around May 2020, the sushi trays shipped by Defendant to Plaintiff were  
18 materially non-conforming and defective. The trays were bent beyond tolerances,  
19 making them unfit for Plaintiff's intended use.  
20 11. The defect was latent, in that the extent of the deformation was not discernable to the  
21 naked eye or by any commercially reasonable means other than trying to use the  
22 product in Plaintiff's manufacturing process.  
23 12. After Plaintiff became aware of the defect in or about June 2020 and complained to  
24

1      Defendant, Defendant admitted the existence of the defect.

2      13. Attached as Exhibit A is a true and correct copy of the email correspondence which  
3      includes that admission.

4      14. Defendant represented that it was striving to improve its production methods to return  
5      its goods to specified tolerances.

6      15. On that basis, Plaintiff continued to accept shipments from Defendant and pay for them,  
7      in the reasonable expectation that they would be sufficiently improved or that if not,  
8      Defendant would seasonably cure the defect.

9      16. However, none of the shipments proved to be fit for the intended use.

10     17. Defendant has not cured the defects.

11     18. Plaintiff, in writing, rescinded acceptance of Defendant's defective product.

12     19. Defendant further acknowledged the defect by accepting return of some of the defective  
13     product.

14     20. Defendant has refused, however, to accept the remainder. More to the point, Defendant  
15     has refused to refund Plaintiff's payments for any of the defective shipments.

16     21. Attached as Exhibit B is a summary of Plaintiff's payments for Defendant's defective  
17     product, totaling \$1,351,817.60.

18                    **V.      FIRST CAUSE OF ACTION—BREACH OF CONTRACT**

19     22. Plaintiff incorporates the above allegations as if fully set forth here.

20     23. There existed and exists a binding contract between Plaintiff and Defendant whereby  
21     Defendant would supply sushi trays to Plaintiff.

22     24. Plaintiff has fully performed under the contract by paying for the goods.

23     25. Defendant has failed to perform under the contract by supplying defective goods.

1 26. Defendant has further failed to perform under the contract by failing to supply sushi  
2 trays.

3 27. Plaintiff has been damaged by Defendant's breach of contract and is entitled to recover  
4 therefor in an amount to be determined at trial which is at least \$1,351,817.60, plus  
5 cover and other consequential damages.

6 **VI. SECOND CAUSE OF ACTION—**

7 **BREACH OF IMPLIED WARRANTY OF FITNESS**

8 28. Plaintiff incorporates the above allegations as if fully set forth here.

9 29. Defendant knew, or had reason to know of, the particular purpose for which the goods  
10 at issue were being employed by Plaintiff.

11 30. Defendant knew, or had reason to know, that Plaintiff was relying upon Defendant's  
12 skill and/or judgment to furnish suitable goods.

13 31. Plaintiff relied upon Defendant's skill and/or judgment.

14 32. Defendant failed to provide goods suitable for the purpose intended.

15 33. Plaintiff has been damaged thereby and is entitled to recover therefor in an amount to  
16 be determined at trial which is at least \$1,351,817.60 plus cover and other  
17 consequential damages.

18 **VII. THIRD CAUSE OF ACTION—UNJUST ENRICHMENT**

19 34. Plaintiff incorporates the above allegations as if fully set forth here.

20 35. Defendant has received a benefit in the amount of \$1,351,817.60.

21 36. That benefit was received to the detriment of Plaintiff.

22 37. It would be unjust for Defendant to retain this benefit.

23 38. Plaintiff should receive restitution of the full amount.

## **PRAYER FOR RELIEF**

- A. A monetary judgment in favor of Plaintiff against Defendant in the amount of at least \$1,351,817.60.
- B. Pre- and post-judgment interest.
- C. Such other relief as the Court deems just.

**DATED** this 26th day of January 2022.

## ARNOLD & JACOBOWITZ PLLC

/s/ Nathan J. Arnold  
Nathan J. Arnold, WSBA No. 45356  
Arnold & Jacobowitz, PLLC  
2701 First Avenue, Suite 200  
Seattle, WA 98121  
206-799-4221  
Fax: 206-866-3234  
Nathan@CAJlawyers.com  
*Counsel for Plaintiff*

# **EXHIBIT A**



Phil Sinz &lt;phil@nwfrozen.com&gt;

**Re: Victory email**

1 message

**Felix Ponce** <felix@nwfrozen.com>  
To: Phil Sinz <phil@nwfrozen.com>

Mon, Jan 17, 2022 11:53 AM

**issues with PO# 2116842 base trays**

Inbox

**Randy Foss** <rfoss@victorypackaging.com>

to me

Fri, Jun 12, 2020, 9:13 AM

Felix,

How's it going with the bases? Any idea of how many defective bases? The factory believes that the defect occurred during the setup process and there should be few products with such defect in the finished goods since during setup the first 5 shots parts may have issues and are scrapped directly.

QC from our factory wants to do more investigation and identify the root cause. Could you please send us some pictures of label information on the cartons with the defects so they can trace back to the production?

Thanks Felix!

**Randy Foss | Sales Manager****Victory Packaging**

501 42nd St NE, Suite 100

Auburn, WA 98002

Cell: 206.200.3029 | Office: 253.520.2992

E-mail: [rfoss@victorypackaging.com](mailto:rfoss@victorypackaging.com)Website: [www.victorypackaging.com](http://www.victorypackaging.com)

Mon, Jan 17, 2022 at 2:38 PM Felix Ponce &lt;felix@nwfrozen.com&gt; wrote:

**Retail Tray delivery and Moji base pick up**

Inbox

**Randy Foss** <rfoss@victorypackaging.com>

to me

Thu, Jul 23, 2020, 9:52 AM

Felix,

Can we do the pickup of defective Moji bases and delivery of 20 pallets Retail Monday and/or Tuesday? We originally planned to get this done this week. Let me know – thanks

**Randy Foss | Sales Manager****Victory Packaging**

501 42nd St NE, Suite 100

Auburn, WA 98002

Cell: 206.200.3029 | Office: 253.520.2992

E-mail: [rfoss@victorypackaging.com](mailto:rfoss@victorypackaging.com)Website: [www.victorypackaging.com](http://www.victorypackaging.com)

**Felix Ponce**

Yes whatever day is best for you  
**Randy Foss** <[rfoess@victorypackaging.com](mailto:rfoess@victorypackaging.com)>  
to me

Thu, Jul 23, 2020, 12:20 PM

Thu, Jul 23, 2020, 1:10 PM

Thanks Felix

**Randy Foss | Sales Manager****Victory Packaging**

501 42nd St NE, Suite 100

Auburn, WA 98002

Cell: 206.200.3029 | Office: 253.520.2992

E-mail: [rfoess@victorypackaging.com](mailto:rfoess@victorypackaging.com)Website: [www.victorypackaging.com](http://www.victorypackaging.com)**From:** Felix Ponce [mailto:[fponce@banzai-sushi.com](mailto:fponce@banzai-sushi.com)]**Sent:** Thursday, July 23, 2020 12:21 PM**To:** Randy Foss**Subject:** Re: Retail Tray delivery and Moji base pick up

**CAUTION:** This email originated from outside of Victory Packaging. Do not click links or open attachments unless you recognize the sender and know the content is safe.

On Mon, Jan 17, 2022 at 2:29 PM Felix Ponce <[felix@nwfrozen.com](mailto:felix@nwfrozen.com)> wrote:

Oct 2020

## Moji PP Base curl/bend issue

Inbox

**Randy Foss** <[rfoess@victorypackaging.com](mailto:rfoess@victorypackaging.com)>

to Dave, me

Oct 22, 2020, 10:03 AM

Felix &amp; Dave,

I've attached the full response I received from our factory. There was a change made based on our input based on the issues we were seeing with the snap fit back in the Ma timeframe. The thermoforming temperature was increased a little to improve the snap fit. They're saying that's the reason for the curl or bend. If they reduce the temperature, the snap fit will not be as good. I don't understand how this issue evolved over time – we did make several modifications to the Moji tooling over time. They're saying that we're to make new tooling to reduce or remove the curl/bend issue while keeping the solid snap fit.

Let me know how you want to proceed at this point. Produce at current temperature, accepting slight curl/bend or reduce the temperature and change to the snap fit. Obviously creating new tooling is an option we can pursue as well.

NOTES from the factory:

*Please review the investigation and action on the bent issue as below:*

*Investigation:*

1. Checked the standard samples approved which are bent a little;
2. Checked the retained batch samples made after May which are bent a little;

3. The bent size is about 3mm;
4. All samples checked are with good snap fit;
5. Quality records shows that the PO running parts are with good snap fit and within specs;
6. There are no changes on the materials and thickness;
7. There are no any recycle materials used;
8. Based on the checking of retained samples, the bent issue started while the snap fit issue was solved

Root cause:

As the email enclosed, in May, in order to get a better snap fit without re-building a new mold, the process parameter of tray was adjusted, the thermo forming temperature was increased a little. However, the higher temperature causes a bigger bent issue.

Action:

Given better snap fit needs a higher temperature, but flat tray needs a lower temperature, the facts needed for the two items are opposite, so the process parameters can't be adjusted any more to keep a stable snap fit, a new mold has to be built to improve the bent issue.

Hope the above can be helpful on your concerns, the snap fit will not be impacted.

Get back to me asap – thanks!

Randy Foss | Sales Manager, Pacific NW & Northern CA

### Victory Packaging

Cell: 206.200.3029

Seattle Office: 800.288.0875

Tracy Office: 800.817.5581

Email: [rfoss@victorypackaging.com](mailto:rfoss@victorypackaging.com)



F

**Felix Ponce** <[fponce@banzai-sushi.com](mailto:fponce@banzai-sushi.com)>

to Randy, Dave

Oct 22, 2020, 10:31 AM

Seems like the issue is getting worse. The samples that we looked at the other day were the most bent.

Did anyone do the water test?

--

Felix Ponce  
253.389.4166  
2141 S 211th st  
ste. G  
Des Moines, WA 98198

R

**Randy Foss** <[rfoss@victorypackaging.com](mailto:rfoss@victorypackaging.com)>

to me, Dave

Oct 22, 2020, 11:14 AM

Felix,

Per our discussion, I'll communicate to the factory that they can look at reducing the temperature slightly to minimize the bend/curl while keeping a solid snap fit. We will review the next production run with this temperature adjustment to see if we like the results. I'll also mention that the production samples seemed to have a more pronounced bend/curl and ask them to acknowledge that the temperature may have been set higher than what we've seen from recent production runs.

In the meantime, can you sign and date the physical samples so I can give them approval to proceed with removing the tabs on the next available production run? Than

Randy Foss | Sales Manager, Pacific NW & Northern CA

## Victory Packaging

Cell: 206.200.3029

Seattle Office: 800.288.0875

Tracy Office: 800.817.5581

Email: [rfoss@victorypackaging.com](mailto:rfoss@victorypackaging.com)



**From:** Felix Ponce [mailto:[fponce@banzai-sushi.com](mailto:fponce@banzai-sushi.com)]

**Sent:** Thursday, October 22, 2020 10:31 AM

**To:** Randy Foss

**Cc:** Dave Cook ([dcook@banzai-sushi.com](mailto:dcook@banzai-sushi.com))

**Subject:** Re: Moji PP Base curl/bend issue

**CAUTION:** This email originated from outside of Victory Packaging. Do not click links or open attachments unless you recognize the sender and know the content is safe.

D

**Dave Cook** <[dcook@banzai-sushi.com](mailto:dcook@banzai-sushi.com)>

to Randy, me

Oct 22, 2020, 12:36 PM

Or it could be caused from recycled material?

Thank you, Dave

On Oct 22, 2020, at 11:14 AM, Randy Foss <[rfoss@victorypackaging.com](mailto:rfoss@victorypackaging.com)> wrote:

Felix,

Per our discussion, I'll communicate to the factory that they can look at reducing the temperature slightly to minimize the bend/curl while keeping a solid snap fit. We will review the next production run with this temperature adjustment to see if we like the results. I'll also mention that the production samples seemed to have a more pronounced bend/curl and ask them to acknowledge that the temperature may have been set higher than what we've seen from recent production runs.

In the meantime, can you sign and date the physical samples so I can give them approval to proceed with removing the tabs on the next available production run? Thanks!

Randy Foss | Sales Manager, Pacific NW & Northern CA

## Victory Packaging

Cell: 206.200.3029

Seattle Office: 800.288.0875

Tracy Office: 800.817.5581

Email: [rfoss@victorypackaging.com](mailto:rfoss@victorypackaging.com)

<image001.jpg>

&lt;image001.jpg&gt;

**Randy Foss** <rfoss@victorypackaging.com>

to Dave, me

Oct 22, 2020, 2:29 PM

Dave,

They stated in the email there's no recycled material

**Randy Foss | Sales Manager, Pacific NW & Northern CA****Victory Packaging**

Cell: 206.200.3029

Seattle Office: 800.288.0875

Tracy Office: 800.817.5581

Email: [rfoss@victorypackaging.com](mailto:rfoss@victorypackaging.com)

# **EXHIBIT B**

Type	Date	Num	Name	Amount
52631 - Black Base	05/19/2020	137143455	Victory Packaging	22,436.00
52632 - Clear Lid	05/19/2020	137143455	Victory Packaging	15,052.00
52631 - Black Base	06/10/2020	138679785	Victory Packaging	22,436.00
52632 - Clear Lid	06/10/2020	138679785	Victory Packaging	15,052.00
52631 - Black Base	07/08/2020	140590286	Victory Packaging	13,777.60
52631 - Black Base	07/08/2020	140590285	Victory Packaging	22,436.00
52632 - Clear Lid	07/08/2020	140590285	Victory Packaging	15,052.00
52632 - Clear Lid	07/08/2020	140590286	Victory Packaging	9,243.20
52631 - Black Base	07/24/2020	141786981	Victory Packaging	10,238.40
52632 - Clear Lid	07/24/2020	141786981	Victory Packaging	6,868.80
52631 - Black Base	07/30/2020	142195748	Victory Packaging	-16,874.40
52631 - Black Base	07/30/2020	142257264	Victory Packaging	22,436.00
52632 - Clear Lid	07/30/2020	141786977	Victory Packaging	-2,544.00
52632 - Clear Lid	07/30/2020	142257264	Victory Packaging	15,052.00
52631 - Black Base	08/05/2020	142706139	Victory Packaging	22,436.00
52632 - Clear Lid	08/05/2020	142706139	Victory Packaging	15,052.00
52631 - Black Base	08/12/2020	143124587	Victory Packaging	22,436.00
52632 - Clear Lid	08/12/2020	143124587	Victory Packaging	15,052.00
52631 - Black Base	08/20/2020	143771350	Victory Packaging	22,436.00
52631 - Black Base	08/20/2020	143771364	Victory Packaging	22,436.00
52632 - Clear Lid	08/20/2020	143771350	Victory Packaging	15,052.00
52632 - Clear Lid	08/20/2020	143771364	Victory Packaging	15,052.00
52631 - Black Base	08/31/2020	144479382	Victory Packaging	22,436.00
52632 - Clear Lid	08/31/2020	144479382	Victory Packaging	15,052.00
52631 - Black Base	09/15/2020	145387056	Victory Packaging	22,436.00
52632 - Clear Lid	09/15/2020	145387056	Victory Packaging	15,052.00
52631 - Black Base	09/22/2020	145913431	Victory Packaging	22,436.00
52631 - Black Base	09/22/2020	145913432	Victory Packaging	22,436.00
52632 - Clear Lid	09/22/2020	145913431	Victory Packaging	15,052.00
52632 - Clear Lid	09/22/2020	145913432	Victory Packaging	15,052.00
52631 - Black Base	09/28/2020	146346017	Victory Packaging	22,436.00
52632 - Clear Lid	09/28/2020	146346017	Victory Packaging	15,052.00
52631 - Black Base	09/30/2020	146516251	Victory Packaging	22,436.00
52632 - Clear Lid	09/30/2020	146516251	Victory Packaging	15,052.00
52631 - Black Base	10/19/2020	147905981	Victory Packaging	22,436.00
52632 - Clear Lid	10/19/2020	147905981	Victory Packaging	15,052.00
52631 - Black Base	11/09/2020	149584509	Victory Packaging	24,140.00
52632 - Clear Lid	11/09/2020	149584509	Victory Packaging	15,052.00
52631 - Black Base	11/19/2020	150424411	Victory Packaging	24,140.00
52632 - Clear Lid	11/19/2020	150424411	Victory Packaging	15,052.00
52631 - Black Base	12/04/2020	151536258	Victory Packaging	24,140.00
52632 - Clear Lid	12/04/2020	151536258	Victory Packaging	15,052.00
52631 - Black Base	12/14/2020	152271760	Victory Packaging	24,140.00
52632 - Clear Lid	12/14/2020	152271760	Victory Packaging	15,052.00
52631 - Black Base	12/22/2020	152897305	Victory Packaging	24,140.00

<b>52631 · Black Base</b>	12/29/2020	153213159	Victory Packaging	24,140.00
<b>52632 · Clear Lid</b>	12/29/2020	153213159	Victory Packaging	15,052.00
<b>52631 · Black Base</b>	01/05/2021	153577411	Victory Packaging	24,140.00
<b>52632 · Clear Lid</b>	01/05/2021	153577411	Victory Packaging	15,052.00
<b>52631 · Black Base</b>	01/12/2021	154121230	Victory Packaging	24,140.00
<b>52632 · Clear Lid</b>	01/12/2021	154121230	Victory Packaging	15,052.00
<b>52631 · Black Base</b>	01/27/2021	155258874	Victory Packaging	24,140.00
<b>52632 · Clear Lid</b>	01/27/2021	155258874	Victory Packaging	15,052.00
<b>52631 · Black Base</b>	01/28/2021	155410761	Victory Packaging	24,140.00
<b>52632 · Clear Lid</b>	01/28/2021	155410761	Victory Packaging	15,052.00
<b>52631 · Black Base</b>	02/09/2021	156325900	Victory Packaging	24,140.00
<b>52632 · Clear Lid</b>	02/09/2021	156325900	Victory Packaging	15,052.00
<b>52631 · Black Base</b>	02/17/2021	156923967	Victory Packaging	24,140.00
<b>52632 · Clear Lid</b>	02/17/2021	156923967	Victory Packaging	15,052.00
<b>52631 · Black Base</b>	02/22/2021	157236734	Victory Packaging	24,140.00
<b>52632 · Clear Lid</b>	02/22/2021	157236734	Victory Packaging	15,052.00
<b>52631 · Black Base</b>	02/24/2021	157460198	Victory Packaging	24,140.00
<b>52632 · Clear Lid</b>	02/24/2021	157460198	Victory Packaging	15,052.00
<b>52631 · Black Base</b>	03/09/2021	158422161	Victory Packaging	24,140.00
<b>52631 · Black Base</b>	03/09/2021	158422162	Victory Packaging	24,140.00
<b>52632 · Clear Lid</b>	03/09/2021	158422161	Victory Packaging	15,052.00
<b>52632 · Clear Lid</b>	03/09/2021	158422162	Victory Packaging	15,052.00
<b>52631 · Black Base</b>	03/26/2021	159563836	Victory Packaging	24,140.00
<b>52632 · Clear Lid</b>	03/26/2021	159563836	Victory Packaging	15,052.00
<b>52631 · Black Base</b>	03/30/2021	159709417	Victory Packaging	24,140.00
<b>52632 · Clear Lid</b>	03/30/2021	159709417	Victory Packaging	15,052.00
<b>52631 · Black Base</b>	05/07/2021	162242685	Victory Packaging	24,140.00
<b>52632 · Clear Lid</b>	05/07/2021	162242685	Victory Packaging	15,052.00
<b>52631 · Black Base</b>	05/11/2021	162324033	Victory Packaging	24,140.00
<b>52632 · Clear Lid</b>	05/11/2021	162324033	Victory Packaging	15,052.00

**TOTAL: 1,351,817.60**